IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.341 OF 2006

Shashikant G. Sawant, Minor through his next friend & Mother ; Smt.Sulochana S. Sawant & Anr. ....Appellants
V/s.
Rukmini S. Sawant & Ors. ....Respondents

Mr.A.S. Khandeparkar for the Appellants.

Mr.Vijay Killedar for Respondent Nos.2 to 5.

CORAM : S.J. VAZIFDAR, J.
DATED : 24TH SEPTEMBER, 2007.

P.C. :

1. Respondent No.1 has expired. It is however, stated that all the heirs of Respondent No.1 are on record. The remaining Respondents have been served.

2. The Second Appeal does not warrant admission, as the main issue is one of a question of fact.

3. The Appellants were Defendant Nos.1 and 2. Respondent Nos.1 and 2 were the Plaintiffs. Respondent Nos.3, 4 and 5 are sisters of Respondent No.2. Respondent No.2 is son of Respondent No.1 and the father of the Appellants. The suit was filed for partition and a declaration of 1/3rd share. Defendant

Nos.1 and 2 claimed under the Will of their paternal grand-father one Sitaram i.e. the father of Respondent No.2.

4. The Will is not disputed. However, both the Courts below found on appreciation of evidence that Sitaram had 1/3rd share in the entire estate and therefore, he could have bequeathed only 1/3rd share. The finding was based on the provisions of the Will and also on the admission of the Appellants' mother whose evidence they relied upon. It is not possible to state that appreciation of evidence was not proper or that the Courts below did not weigh the same properly.

5. In the circumstances, the Second Appeal is dismissed.